IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8134 OF 2005

Dr.Bacha Paul Kitchener Petitioner

versus

The Union of India & others Respondents

Shri Virag Tulzapurkar with Shri Pankaj Rajamachikar for petitioner.

Shri Y.R.Misra with Anurag Gokhale for respondents 1 to 3.

Shri Ashok Tajine for respondent no.4.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 10th February 2006

PC :

1. This petition under Article 227 of the Constitution of India challenges an order of the Lower Appellate Court in Miscellaneous Civil Appeal No.932 of 2003.

2. By the order under challenge delivered on 20th October 2005, the learned District Judge, Pune has allowed this Miscellaneous Civil Appeal and vacated the order passed by the Joint Civil

Judge, Senior Division, Pune in Regular Civil Suit No.1682 of 1999.

3. Petitioner is original plaintiff and the abovenamed civil suit is instituted by him in the Trial Court and he claimed a declaration that he is Lessee and/or entitled to retain possession of the property specified in paragraph no.1 of the plaint till expiry of period of lease. He has claimed a further declaration to protect his possession coupled with permanent injunction restraining the respondents who are defendants to the said suit from in any manner disturbing the ownership and possession of the building/structure as also the lease-hold rights. He seeks restraint order against the respondents from taking possession of any portion of the property.

4. The Trial Court considered relevant pleas, including, whether the petitioner has made out a prima facie case.

5. It is not in dispute that a portion admeasuring 4046.31 sq.mtrs. out of the total holding of the petitioner of 9186 sq.mtrs. has been declared as surplus vacant land. The

proceedings in that behalf under the Urban Land Ceiling and Regulation Act, 1976 were initiated by the Competent Authority and the said declaration has gained finality. The only question that remains is Urban Land Ceiling Act having been repealed by the Repealing Act in the year 1999, if the physical possession of the surplus vacant land is still with the petitioner, then by virtue of the provisions of Repealing Act, whether the proceedings commenced by the competent authority lapse and/or come to an end. In other words whether the land would revert back to the petitioner in the light of the repeal.

6. It is brought to my notice by Shri Tulzapurkar - learned counsel appearing for the petitioner that before the Trial Court, in support of this contention, the petitioner placed necessary and relevant documents. The respondents-original defendants, on the other hand, could not controvert the position namely that the petitioner is in physical possession of the surplus vacant land. Although, a contention was raised that physical possession was taken over by the respondents on 27th February 1991, no documentary evidence proving this aspect was placed before the Trial Court. In these

circumstances, the Trial Court was justified in passing a restraint order and such an order should not have been disturbed by the Lower Appellate Court. His complaint is that the Lower Appellate Court has misdirected itself completely by proceeding on the basis that the petitioner has firstly suppressed material and relevant facts and secondly that the claim would be ex-facie time barred. He submits that the third assumption of the Lower Appellate Court that the petitioner has alternate and efficacious remedy under the ULC Act and therefore the present suit could not have been instituted, is equally fallacious and baseless. For all these reasons he submits that this Court should exercise it's jurisdiction under Article 227 of the Constitution of India and set aside the order under challenge and restore that of the Trial Court during pendency of the suit.

7. Shri Misra, who represented original defendants 1 to 3 refers to an affidavit, filed by the Defence Estates Officer, in this Court on 12th January 2006 and more particularly the annexures thereto. He submits that physical possession of the property was taken over on 27th February 1991 by defendants 1 to 3. This act was

complete before the repealing act coming into force and hence the Lower Appellate Court's order need not be disturbed and in any event can be sustained on this ground.

8. Normally, I would have been inclined to accept the submissions of Shri Misra, based as they, are upon some documents. However, neither in the order of the Trial Court nor that of the Lower Appellate Court there is any reference to these documents and they have been produced, for the first time, as annexures to affidavit in reply, filed to this writ petition. This Court passed an order on 21st December 2005 noticing the only point in controversy. This Court directed that no further steps should be taken in the matter by respondents 1 to 3. The order of 21st December 2005 restrains respondents 1 to 3 from taking further steps and they were directed to produce the file in respect of the suit property.

9. On the last occasion, a grievance was made firstly with regard to inspection not being granted of the documents and secondly that an attempt has been made by respondents to over reach the order passed by this Court. Further

grievance is that there is a violation committed of this order inasmuch as, respondent no.4 Cantonment Board, who is also a party to the suit, has made an attempt to disturb the physical possession and in any event altered the status-quo with regard to the suit property. A grievance was made that such an attempt was made on 26th January 2006 and repeated on 4th February 2006.

10. Any attempt, as above, is disputed and the Cantonment Board files an affidavit tendering unconditional apology. However, it seeks to justify it’s act by stating that the vacant land which has a board placed "Defence Land" is being used for parking of vehicles. It was necessary for this purpose to clean up the area and that is how the Officers entered upon the land.

11. The photograph which is produced on record of this petition refers to a letter, which is addressed on 4th February 2006 by the petitioner to the Cantonment Board, demonstrates that prima facie a Board is there. However, the property/ portion is open.

12. In my view, all technical pleas as are being

raised by the Cantonment Board that the order dated 21st December 2005 does not prevent them from entering upon the land are untenable. However, it is not necessary for me to pronounce finally as to whether the petitioner has lost his right under the repealing act because the possession was taken over on 27th February 1991. All documents having been produced before this Court, an opportunity will have to be given to the petitioner to meet the contents thereof and place before the Trial Court such materials as are permissible in law, to controvert the same. All documents which are produced before me can very well be produced before the Trial Court and the contents relied upon at the trial.

13. However, it would be better if status-quo at site is preserved and maintained. There is a dispute as to demarcation as well. However, it is not necessary for me to go into that aspect. It will be open for the parties to apply to the Trial Court for appropriate directions in that behalf. For the time being, status-quo as prevailing on 10th February 2006 shall be maintained by parties till Regular Civil Suit No.1682 of 1999 is heard and disposed of. This status-quo means that the Cantonment Board cannot

utilise the land as a parking area until the disposal of the suit.

14. Since the suit is filed in the year 1999 and the land is claimed as belonging to the Defence Estate Department, it would be desirable that the Regular Civil Suit is heard and disposed of as expeditiously as possible and in any event by 31st December 2006. All contentions on merits of both sides are expressly kept open. All observations made by me are prima facie and only made for the purposes of disposal of this petition which challenges an interlocutory order in the suit. It would be open for both sides to substantiate their pleas with regard to physical possession of the property. Petition disposed of.

(S.C.DHARMADHIKARI, J.)